

Legal Services Fee Agreement

This Agreement is entered into by and between Thomas P. Guarino, Attorney at Law, (hereinafter "Attorney") and The City of Cave Springs (hereinafter "Client") on this 8th day of November, 2016 in the County of Benton, State of Arkansas.

1. **SCOPE OF SERVICES.** Client hires and Appoints Attorney to provide legal services as the City Attorney of Cave Springs. Attorney will provide those legal services reasonably required to fulfill the responsibilities of the City Attorney and as described in Exhibit "A", "Scope of Services" attached hereto. Exhibit "A" is not intended to limit the authority of a City Attorney authorized by law.

2. **LEGAL SERVICES EXCLUDED.** All legal services not specifically set forth in Paragraph 1 and Exhibit "A" above are excluded under this agreement.

3. **OBLIGATIONS OF CLIENT.** Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, and to pay Attorney's bills on time.

4. **LEGAL FEES AND BILLING PRACTICES.** The fees payable under this agreement are divided into different Terms to accommodate the needs of Client. The "Terms" are a "Short Term" to accommodate a more intensive need for services for the first few months and a "Long Term" for when the need is anticipated to be not so intensive. The terms each contain a Flat Fee amount for the specified number of hours with additional hours to be charged at an hourly rate as specified. Flat Fees hours do not carry over from month to month and Flat Fees are not reduced for hours not used. Client agrees to pay Attorney as follows:

Short Term.

In the Short Term the initial fees shall be on a Flat Fee basis for up to the first 60 hours per calendar month. It is understood that the Agreement is beginning part way into the first month, however the full 60 hours is estimated to be needed.

November 2016

Hours 1-60 Flat Fee of \$4,500.00 payable on or before November 14th, 2016.

Hours 61 and above \$100.00 per hour.

December 2016 – February 2017

Hours 1-60 Flat Fee of \$4,500.00 payable on or before the first of each month.

Hours 61 and above \$100.00 per hour.

Long Term

In the Long Term, it is estimated that the need for services on a regular basis will less. Long Term the initial fees shall be on a Flat Fee basis for up to the first 40 hours per calendar month. The Flat Fee in the Long Term shall be as follows:

March 2017 and thereafter monthly

Hours 1-40 Flat Fee of \$3000.00 payable on or before the first of each month.

Hours 41 and above \$100.00 per hour.

The time charged will include, but is not limited, to the time Attorney spends on research, drafting legal memoranda and ordinances and resolutions, attendance at meetings, travel time for Client meetings, and telephone calls relating to Client's matter, including calls with Client and other parties and attorneys. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended. Attorney will charge for waiting time and for travel time, both local and out of town.

Time is charged in minimum units of one quarter (. 25) of an hour. Attorney will maintain a log of time used under the Flat Fee agreement.

5. COSTS AND EXPENSES. Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses paid or owed by Client in connection with the provision of services, or which have been advanced by Attorney on Client's behalf and which have not been previously paid or reimbursed to Attorney. There is no obligation under this agreement for Attorney to advance such costs or expenses. Costs, disbursements and expenses commonly include photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultant, and other similar items. Except for the items listed below, costs and expenses will be charged at Attorney's cost.

In-office photocopying: 10 cents/page

Facsimile charges: 1 dollar/ page

Mileage: IRS allowable rate /mile or

Arkansas State Rate if mandated by Law

Copying availability is limited and large copy projects (beyond 20 pages) are not included at in-office price. Client understands that, as set forth in Paragraph 4 above, a deposit for costs may be required before the expenditure is made by Attorney. (For costs in excess of \$100.00 in any calendar month). Client agrees to pay all deposits required under this Agreement within 10

days of Attorney's demand or in the case of costs due sooner in a sufficient time to allow the cost to be timely paid.

Any deposit that is unused at the conclusion of Attorney's services will be refunded.

6. STATEMENTS AND/OR PAYMENTS. Flat Fee payments are due and payable monthly as set forth in Paragraph 4 above without a separate invoice or statement. Attorney shall send Client statements as appropriate, (generally monthly) for services more than the Flat Fee agreed hours to Client's most recent address on record, disclosing attorney's fees and costs and summaries, any funds applied from the retainer, and any current balance still owing. In months where the Flat Fee amount is not exceeded Statements for costs will be sent. Statements are to be paid in full within 15 days after the Statement has been mailed. A late fee of 10% per annum shall be charged after that time. Attorney reserves the right to waive such late fee from time to time in Attorney's sole discretion; such waiver shall not be construed as a waiver of the right to collect such late fee under this agreement.

7. INDEMNIFICATION. Client represents it participates in the Arkansas Municipal Leagues Municipal Legal Defense Program, which includes liability protection for City Officials. Attorney as City Attorney shall be indemnified and defended to the maximum extent permitted under this program. Attorney, as City Attorney, shall be indemnified and defended by Client for any claim, cause of action or matter that arises from, occurs during or is related to Attorney's provision of legal services under this agreement to the maximum permitted by Arkansas Law.

8. LIMITATION OF REPRESENTATION. Attorney is representing Client only on the matter described in Paragraph 1 and Exhibit "A". Attorney's representation does not include other matters.

9. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time after the Short Term phase, upon 30 days' written notice to Attorney. Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) upon 30 days' notice with or without cause or (d) for good cause and upon reasonable notice to Client without client's consent. Good cause includes, but is not limited to, Client's breach of this contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, Client's failure to make timely payment of fees and costs or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical.

Attorney may withdraw as Client's attorney of record at any time, in accordance with the Rules of Professional Conduct of the State of Arkansas.

Notwithstanding Attorney's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs incurred prior to the termination and Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

10. CONCLUSION OF SERVICES. When Attorney's services conclude, all unpaid charges will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a deposit against costs to apply to such unpaid charges. After Attorney's services conclude, upon request, Client's file and property will be made available to Client, or Client's other attorney.

11. CONFLICT OF INTEREST. Client is informed that the Rules of Professional Conduct of Arkansas require, before an attorney may represent a client, that the attorney disclose to the client any actual or potential conflict of interest between the client and another person represented by Attorney. If an actual or potential conflict of interest exists, that attorney may not represent that client without the written consent of such client and the adverse party. Attorney is not aware of any relationship with a person that may have a conflict of interest in the present subject matter or in any separate subject matter of Client under this Agreement.

12. DISCLAIMER OF GUARANTEE. Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of this matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in any matter. Attorney's comments about the outcome of any matter are expressions of opinion only. Client acknowledges that Attorney has made no promise or guarantees about the outcome.

13. MEDIATION CLAUSE. If a dispute arises out of or relating to any aspect of this Agreement between Client and Attorney, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

14. ARBITRATION OF FEE DISPUTE. In the event of a dispute between Client and Attorney pertaining to fees and costs or charges by Attorney, such dispute may be resolved by arbitration in accordance with the applicable arbitration rules in the State of Arkansas.

15. BREACH OF CONTRACT/MALPRACTICE. In the event a dispute arises between Attorney and Client regarding any alleged Breach of Contract or Malpractice in the providing of legal services by Attorney, such dispute shall be first submitted, unless mutually waived in writing, to arbitration in accordance with the applicable arbitration rules in the State of Arkansas. Liability for any Breach of Contract, Malpractice or any other claim shall be limited to the limits of Attorneys Professional Liability Coverage actually payable. Attorney shall maintain professional liability coverage with 100,000/300,000 limits during the term of this agreement. Attorney's liability coverage shall be secondary to any coverage provided by Client for City officers or available through the Arkansas Municipal League.

16. SIGNING OF THIS AGREEMENT.

The undersigned below have read and agree to be bound by this Agreement and have each had the opportunity to have the Agreement reviewed by counsel if they so choose. This agreement shall be interpreted as so having been reviewed.

17. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

19. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

20. EFFECTIVE DATE. This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performs services.

CITY OF CAVE SPRINGS

DATE

THOMAS P. GUARINO
ATTORNEY AT LAW

DATE

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ATTACHMENT EXHIBIT "A" SCOPE OF SERVICES

EXHIBIT A

SCOPE OF SERVICES

This exhibit to the Agreement to provide City Attorney Services to the City of Cave Springs is intended to address the scope of the appointment and certain initial matters that need review as well as to address certain issues as to the intent of the Parties. It is intended to present transparency and clarity as to expectations.

1. It is intended that Attorney shall have the full scope of authority of a City Attorney for The City of Cave Springs allowed by Arkansas Law and shall occupy such office to the fullest extent allowed by law.
2. It is understood that Attorney is generally required to attend all regularly scheduled City Council and/or Planning Meetings and attend Sewer and Water Committee meetings as Attorney deems needed or requested as by Client. However, from time to time it is understood a meeting may be missed due to vacation, illness or personnel emergency. Attorney shall provide notice to the extent practical. Attorney agrees that he the City of Cave Springs shall have priority for its meetings should Attorney represent any other City. Attorney represents he does not represent any other City at this time and will make Client aware of any such representation in the future that may cause a conflict with this paragraph.
3. It is understood that there is an existing agreement for the provision of criminal, code enforcement and other matters monthly in Cave Springs District Court. It is not intended that this agreement will include provision of such services at this time, although it is understood that such agreements may be reviewed from time to time. It is understood that Attorney, to the extent required to do so will take actions necessary to keep this agreement in place in the Short Term. It is not the current intention of either party the seek to change the agreement and this paragraph should not be interpreted in any manner other than that the status of the existing agreement is unknown, except that the Court has indicated it is working at this point.
4. It is understood that there may be other attorneys currently representing the City of Cave Springs that may or may not have been authorized. Client requires that all litigation services provided to the City of Cave Springs shall be under the exclusive supervision of the City Attorney and that Attorney is requested at the earliest opportunity to ascertain and review such litigation/representation and report as appropriate to the Client.
5. It is currently Client's concern that there is a lack of clarity in the ordinances of the City of Cave Springs including but not limited to zoning and other related areas. It is Client's request that in the to the extent practical Attorney will review such ordinances and report

to the Client within the Short Term of this agreement. Client agrees to supply Attorney with a complete copy of all ordinances as well as a copy of the ordinance book within 5 days of the approval of this agreement, to facilitate such review.

6. It is Client's desire that all contracts, ordinances and resolutions receive Attorney's review before execution or presentation to the City Council. It is important that Attorney receive such document in a sufficient time to facilitate a meaningful review and accordingly Attorney shall be provided a minimum of 5 working days to review such agreements.
7. The services to be provided do not include long term or extensive litigation services, except that Attorney will take interim short term steps to protect the rights of the City of Cave Springs, including retaining the assistance of additional Counsel to assist in matters for which he does not have the expertise or resources under this agreement. Such matters shall be placed on the next City Council Agenda or Special Meeting Agenda for City Council review or approval as necessary. Attorney fees and Costs for such matters shall not exceed \$5000.00. Minor litigation matters may be handled by Attorney from time to time if in Attorney's sole discretion they are within the capacity of available resources provided and available. This paragraph is not intended to limit Attorneys responsibility and authority under paragraph 1.